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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(WESTERN DIVISION – LOS ANGELES)

LORRIE KRIEGER, individually
and on behalf of the Estate of
Jonathan Senger, deceased,

Plaintiff,

v.

TOYOTA MOTOR NORTH
AMERICA, INC., TOYOTA
MOTOR ENGINEERING &
MANUFACTURING NORTH
AMERICA, INC., TOYOTA
MOTOR MANUFACTURING,
CALIFORNIA, INC., TOYOTA
MOTOR SALES, U.S.A., INC,
TOYOTA MOTOR
CORPORATION, CTS
CORPORATION and DOES 1
through 10, inclusive,

Defendants.

CASE NO.
CV10 1753 **RGK**
COMPLAINT FOR DAMAGES

(JEMx)

**[Products Liability – Toyota Sudden
Unintended Acceleration Incident
Resulting in Personal Injuries and
Wrongful Death]**

- 1) Negligence
- 2) Strict Products Liability: Design Defect
- 3) Strict Products Liability: Failure to Warn
- 4) Breach of Implied Warranty
- 5) Fraud and Deceit: Fraudulent Concealment
- 6) Violation of California's False Advertising Laws, California Business and Professions Code §§ 17500 *et seq.*)
- 7) Wrongful Death and Survivorship
- 8) Claim for Punitive Damages

DEMAND FOR JURY TRIAL

1 COMES NOW Plaintiff LORRIE KRIEGER, individually and on
2 behalf of the Estate of Jonathan Senger, deceased (“Plaintiff”), by and through her
3 counsel, Lieff Cabraser Heimann & Bernstein, LLP, and alleges as follows:

4 **INTRODUCTION**

5 1. This product liability action involves the 2000 Lexus GS 400
6 (“subject vehicle”), which was designed, manufactured, marketed, promoted, sold
7 and distributed by the Toyota entity defendants.

8 2. Certain of Toyota’s cars and trucks have a defect that causes
9 sudden uncontrolled acceleration to speeds of up to 100 miles per hour or more.
10 This defect is combined with the operator’s inability to stop the vehicle during such
11 an incident due to defective electronics and the absence of a properly designed fail-
12 safe, such as a brake-to-idle override system. These defects alone, or in
13 combination, are lethal.

14 3. Data compiled by Safety Research and Strategies, Inc., an
15 automotive safety research organization, shows that Toyota sudden acceleration
16 incidents have accounted for, at least, 725 crashes, 304 injuries, and 18 fatalities.
17 More current statistics show that there have been over 34 deaths.

18 4. Toyota has known about the problems associated with sudden
19 unintended acceleration for some time. Instead of recalling the vehicles and
20 changing their design to improve safety, Toyota essentially hid the problem. This
21 has resulted in numerous injuries and fatalities.

22 **PARTIES**

23 5. At all times herein mentioned, Plaintiff LORRIE KRIEGER and
24 Jonathan Senger, deceased, were residents of Palm Harbor, Florida.

25 6. At all times herein mentioned, Defendant Toyota Motor North
26 America, Inc. was and is a California corporation, and a corporate citizen of
27 California, with its principal place of business at 19001 South Western Avenue, in
28 the City of Torrance, County of Los Angeles, in the State of California.

1 7. At all times herein mentioned, Defendant Toyota Motor
2 Manufacturing, California, Inc., was and is a California corporation and a corporate
3 citizen of California, with its principal place of business in California.

4 8. At all times herein mentioned, Defendant Toyota Motor
5 Engineering & Manufacturing of North America was and is a Kentucky
6 corporation, with its principal place of business located at 25 Atlantic Avenue,
7 Erlanger, Kentucky 41018.

8 9. At all times referenced herein, Defendant Toyota Motor Sales,
9 Inc. was and is a California corporation existing under and by virtue of the laws of
10 incorporation of the State of California, having its headquarters and its principal
11 place of business at 19001 South Western Avenue, in the City of Torrance, County
12 of Los Angeles, in the State of California.

13 10. Upon information and belief, each Toyota entity named above is
14 a wholly owned subsidiary of the Japanese corporation, Toyota Motor Corporation.
15 At all times herein mentioned, Defendants Toyota Motor North America, Inc.,
16 Toyota Motor Engineering & Manufacturing of North America, Toyota Motor
17 Manufacturing, California, Inc., Toyota Motor Sales, Inc., and Toyota Motor
18 Corporation and DOES 1 through 10, inclusive, designed, engineered, developed,
19 manufactured, fabricated, assembled, equipped, tested or failed to test, inspected or
20 failed to inspect, repaired, retrofit or failed to retrofit, failed to recall, labeled,
21 advertised, promoted, marketed, supplied, distributed, wholesaled, and sold Toyota
22 vehicles, including the vehicle operated by Plaintiff.

23 11. At all times herein mentioned, Defendant CTS Corporation was
24 and is an Indiana corporation, with its principal place of business located at Elkhart,
25 Indiana. Plaintiff alleges that CTS Corporation and DOES 1 through 10, inclusive,
26 designed and manufactured accelerator pedals for the Toyota entities.

27 12. At all times referenced herein, Defendants, and each of them,
28 were acting as agents and employees of each of the other Defendants, and were

1 acting within the scope, purpose, and authority of that agency and employment and
2 with the full knowledge, permission, and consent of each of the other Defendants.

3 13. Plaintiff is ignorant of the true and correct names and capacities
4 of the Defendants sued herein as DOES 1 through 10, inclusive, and therefore sues
5 these Defendants by such fictitious names. Plaintiffs will amend this Complaint to
6 allege their true names and capacities when ascertained. Plaintiffs are informed and
7 believe and thereon allege that each of the fictitiously named Defendants is a
8 company that placed a defective product into the stream of commerce, and/or is an
9 agent, employee, joint venturer, or affiliate of the other Defendants, and is
10 responsible for the unlawful conduct herein alleged, and that said Defendants
11 proximately caused the harm alleged herein.

12 **JURISDICTION AND VENUE**

13 14. This Court has jurisdiction over the subject matter of this action
14 pursuant to 28 U.S.C. § 1332 because the amount in controversy is greater than
15 \$75,000, exclusive of interest and costs, and because there is complete diversity of
16 citizenship among the parties.

17 15. This Court has personal jurisdiction over the Defendants
18 because Defendants have transacted business and their affairs in the Central District
19 of California, and because Defendants have committed acts and omissions
20 complained of in the State of California.

21 16. Venue is proper in the Central District of California pursuant to
22 28 U.S.C. § 1391(a) and (b) because a substantial part of the events or omissions
23 giving rise to these claims occurred in this judicial district. In addition, all of the
24 Defendants are subject to personal jurisdiction in this judicial district.

25 **FACTUAL BACKGROUND**

26 17. Toyota is currently the world's largest manufacturer of vehicles
27 with net revenues in 2009 of over \$227 billion.
28

1 18. Beginning in the late 1990s, Toyota manufactured, distributed
2 and sold vehicles with an electronic throttle control system (“ETC”).

3 19. Unlike that of traditional throttle control systems, where a
4 physical linkage connects the accelerator pedal to the engine throttle, in the ETC
5 system, the engine throttle is controlled by electronic signals sent from the gas
6 pedal to the engine throttle. A sensor at the accelerator detects how far the gas
7 pedal is depressed and transmits that information to a computer module which
8 controls a motorized engine throttle. The computer module determines how far the
9 accelerator is depressed, and, in turn, tells the engine throttle motor how far to open
10 the throttle valve.

11 20. When Toyota first introduced the ETC, they continued to
12 include a mechanical linkage between the accelerator and the engine throttle
13 control.

14 21. Beginning with the 2002 model year, however, Defendants
15 began manufacturing, distributing, and selling vehicles without such mechanical
16 linkage.

17 22. Further, Defendants’ ETC system also fails to include a failsafe
18 measure incorporated by other vehicle manufacturers which instructs the ETC
19 system to automatically reduce the engine to idle whenever the brakes are applied
20 without success.

21 23. The combination of the lack of these two safety systems allows
22 the ETC to set the engine throttle to any position regardless of the position of the
23 accelerator, and with no mechanical or electronic failsafe mechanism to allow the
24 driver to effectively stop or slow the car in such circumstances, resulting in
25 numerous injuries and deaths.

26 24. According to an article in the November 8, 2009 issue of the *Los*
27 *Angeles Times* (“*LA Times*”), the *LA Times* located federal and other records of
28

1 19 fatalities and over 1,000 reports by owners involving the unintended acceleration
2 of Toyota vehicles from the 2002 model year and newer.

3 25. The *LA Times* further quotes an independent safety expert as
4 stating that he had identified nearly 2,000 sudden-acceleration cases for Toyota
5 vehicles built since 2001.

6 26. The *LA Times* further states that other experts believe the
7 numbers may be far higher, citing to a 2007 NHTSA survey of 600 Lexus owners
8 that found that 10% complained they had experienced sudden acceleration.

9 27. The *LA Times* further states that when Toyota reported
10 complaint data to NHTSA, Toyota eliminated all reports claiming that the sudden
11 acceleration occurred for “a long duration” or more than a few seconds.

12 28. The *LA Times* further states that in an investigation of reports of
13 sudden acceleration involving 2002 and 2003 Lexus ES and Camry models, Toyota
14 eliminated all reports in five broad categories when responding to NHTSA’s
15 request, excluding all cases in which the drivers said they were unable to control a
16 runaway engine by applying the brakes.

17 29. Thus, at all relevant times, Toyota had full knowledge of the
18 numerous complaints regarding its vehicles, that such vehicles were susceptible to
19 incidents of sudden unintended acceleration, and thus that such vehicles posed a
20 significant risk of injury and death to vehicle occupants, other motorists, and
21 pedestrians.

22 30. Toyota knew, or should have known, about the risks of sudden
23 unintended acceleration present in Toyota vehicles for many years, based upon the
24 following timeline of events:

25 **1992**

26 NHTSA’s Office of Defects Investigation
27 undertook an investigation of 1987-1989 Toyota Camry
28 and Toyota Celica vehicles based upon 556 complaints

1 and 30 accidents resulting from sudden acceleration when
2 a sticking throttle caused unwanted engine power.

3 **2001**

4 2002 Model Year Camry is substantially
5 redesigned on a new platform. The ETCS-i system was
6 one of several new or revised vehicle systems (including
7 transmission and braking system) introduced for the
8 model year 2002 subject vehicles, consisting of an
9 accelerator pedal sensor, a throttle control motor, a
10 throttle position sensor and the engine control module
11 (ECM). To control throttle position and monitor system
12 operation, the system uses redundant hardware at the APS
13 and TPS main and sub sensor and the ECM (main and sub
14 processor).

15 Toyota warns that the installation of a mobile two-
16 way radio system could affect electronic systems,
17 including the fuel injection, electronic throttle control
18 system, cruise control system, and other electronics.
19 Owner's are told to "be sure to check with your Toyota
20 dealer for precautionary measures or special instructions
21 regarding installation."

22 **2002**

23 *February 2, 2002:* First consumer complaint of
24 2002 Camry engine surging when the brakes were
25 depressed.

26 *August 30, 2002:* Toyota issues Technical Service
27 Bulletin TSB EG017-02 to update the Electronic Control
28 Module calibration to address "engine surging" on 2002

1 Camrys with 1MZ-FE engine.

2 “Vehicles may exhibit a surging during light
3 throttle input at speeds between 38 – 42 MPH . . . The
4 Engine Control Module (ECM) calibration has been
5 revised to correct this condition.”

6 *August 31, 2002:* First warranty claim noted by
7 Toyota to correct a throttle problem on a 2002 Camry.

8 **2003**

9 *April, 2003:* Driver of a Toyota Sienna experiences
10 an unwanted acceleration incident that occurred during
11 production Dynamometer testing. The incident was
12 allegedly caused by a missing retaining clip that allowed
13 the center console trim panel to interfere with (trap) the
14 accelerator pedal after it had been depressed. In the
15 aftermath, Toyota reviewed their manufacturing processes
16 and other data and concluded this was an isolated
17 incident. As a secondary measure in June 2003, Toyota
18 changed the design of the trim panel to eliminate the
19 potential for pedal interference in the event the retaining
20 clip is not present.

21 *April 17, 2003:* Peter Boddaert of Braintree, Mass.
22 reports sudden unintended acceleration incident to
23 NHTSA involving his 1999 Lexus LS 400.

24 *April 25, 2003:* Peter Boddaert petitions NHTSA
25 to conduct an analysis of 1997 through 2000 model year
26 Lexus 300 and 400 series vehicles for problems of vehicle
27 speed control linkages and sudden unexpected excessive
28 acceleration. Boddaert cites 271 other complaints to the

1 agency about these vehicles, with 36 referring specifically
2 to sudden unintended acceleration, including several
3 crashes. Boddaert previously complained to the agency
4 about sudden unintended acceleration when he
5 experienced the first of three sudden unintended
6 acceleration events. The final instance resulted in
7 Boddaert rear-ending another vehicle.

8 *May 16, 2003:* Toyota issues Technical Service
9 Bulletin TSB EG008-03 to update the Electronic Control
10 Module calibration to address “engine surging” in 2003
11 Camry’s with 1MZ-FE engine.

12 “Vehicles may exhibit surging during light throttle
13 input at speeds between 38 – 42 mph... The Engine
14 Control Module (ECM) calibration has been revised to
15 correct this condition.”

16 *June 3, 2003:* Toyota changes the shape of the trim
17 panel on the 2004 Sienna after an incident during
18 production in which trim panel interference resulted in a
19 sudden unintended acceleration event.

20 *September 22, 2003:* NHTSA denies the Boddaert
21 petition (DP03003). The agency says that its analysis of
22 speed control complaints involving the Lexus and other
23 peer luxury vehicles shows that Toyota is not a statistical
24 stand-out.

25 **2004**

26 *January 15, 2004:* Ms. Carol J. Mathews of
27 Rockville, Maryland submits a petition to NHTSA
28 requesting an investigation of 2002 and 2003 Lexus

1 ES300 for a defect in the vehicle speed control linkages.
2 She alleged that the throttle control system in her vehicle
3 malfunctioned on multiple occasions and was the cause of
4 a vehicle crash.

5 *February 17, 2004:* NHTSA formally begins
6 DP04003 to investigate Matthews request.

7 *March 5, 2004:* NHTSA grants Matthews petition
8 request and opens defect investigation into 2002 – 2003
9 Camry, Camry Solara and Lexus ES300. The agency
10 reports 37 complaints and 30 crashes resulting in 5
11 injuries in the subject vehicles.

12 According to the complaints, the Toyota vehicles
13 suddenly and unexpectedly surge or accelerate, generally
14 of short duration; some reports allege multiple
15 occurrences or occurrences during slow speed vehicle
16 maneuvers and/or after shifting the transmission and/or at
17 higher speeds under cruise control operation. In most
18 cases, the brake system was reportedly functional and
19 could be used to control the vehicle when the condition
20 occurred.

21 *June 4, 2004:* Toyota sends response to NHTSA
22 investigation into unexpected acceleration in Camry /
23 Lexus ES 300 (PE04021). Toyota denies a defect exists,
24 claims there is no trend, and that its electronic control
25 system cannot fail in ways its engineers have not already
26 perceived.

27 *July 22, 2004:* NHTSA's Office of Defects
28 Investigation closes its investigation of 2002-2003

1 Camrys, Camry Solara and Lexus 300ES vehicles without
2 finding a defect (PE04021). The agency concluded with
3 its standard caveat: "A defect trend has not been
4 identified at this time and further use of agency resources
5 does not appear to be warranted. Accordingly, this
6 investigation is closed. The closing of this investigation
7 does not constitute a finding by NHTSA that a safety-
8 related defect does not exist. The Agency will take further
9 action if warranted by the circumstances."

10 *November 3:* Toyota reports first consumer
11 complaint of engine surging in a 2005 Tacoma.

12 **2005**

13 *July 8, 2005:* Jordan Ziprin of Phoenix, AZ
14 petitions NHTSA to open a defect investigation into
15 sudden unintended acceleration in the 2002 – 2005
16 Toyota / Lexus models for sudden unintended
17 acceleration. Ziprin previously reported a sudden
18 unintended acceleration event in his 2002 Toyota Camry
19 which resulted in a property damage crash.

20 *August 5, 2005:* NHTSA opens Defect Petition
21 investigation (DP05002), based on the request of Jordan
22 Ziprin. Target population is 2002-2005 Camrys and Lexus
23 ES models.

24 *November 15, 2005:* Toyota files final response in
25 DP05002, in which it says that it believes no defect or
26 defect trend exists. Toyota completely discounts drivers'
27 experiences noting that the experiences as described could
28 not have occurred without the fault detection system

1 taking note. Toyota also noted that it reviewed the
2 complaints to NHTSA and found that there are two major
3 allegations; one is that the vehicle unintentionally or
4 suddenly “ACCELERATED” and the other is that the
5 vehicle “SURGED” or “LURCHED”. Toyota believes
6 that these two descriptions of vehicle behavior are two
7 completely different issues.

8 **2006**

9 *January 5, 2006:* NHTSA closes DP05002 and
10 denies the Ziprin petition. NHTSA says it examined 1172
11 owner complaints in a population of 7 million vehicles
12 and could find no trend.

13 *July, 2006:* Toyota changes Floor Carpet Cover on
14 Toyota Highlander and Lexus RX vehicles.

15 *August 24, 2006:* William Jefferson III petitions
16 NHTSA to investigate 2002 – 2006 Camry and Camry
17 Solara vehicles for incidents relating to vehicle surging.
18 The petitioner owned a 2006 Camry and previously
19 owned a 2003 Camry. He alleged that both vehicles
20 exhibited “Engine Surging” which he described as a short
21 duration (1 to 2 second) increase in engine speed
22 occurring while the accelerator pedal is not depressed. For
23 the 2006 vehicle, the petitioner estimated 6 to 8 surge
24 incidents, of varying magnitude, occurred over the course
25 of 10,000 miles and nearly 7 months of ownership.

26 *September 14, 2006:* ODI opens Defect Petition
27 DP06003 in response to petition from William Jefferson
28 III.

1 *December 20, 2006:* Toyota responds to NHTSA
2 request in DP06003. Toyota noted the results of an
3 investigation of the throttle actuator recovered from the
4 Petitioner's vehicle, and said that it could find no
5 abnormality. During the investigations of other returned
6 throttle actuators, Toyota found that some parts inside the
7 throttle actuator had corroded due to water intrusion,
8 concentrated in specific areas where water could intrude
9 into the throttle actuator from the drain hose. Toyota
10 blamed this on heavy weather conditions such as a
11 flooded road or a hurricane. "Although the rate of
12 occurrence of this type of failure is low, to eliminate any
13 possibility of water intrusion under such circumstances,
14 Toyota modified the drain hose.

15 **2007**

16 *February 5, 2007:* Ezal fatal crash in San Luis
17 Obispo, CA involving 2005 Camry.

18 *March 5, 2007:* NHTSA denies the Jefferson
19 Petition stating it has not identified a vehicle-based
20 defect, nor was it able to witness such an event when road
21 testing the Petitioner's vehicle. An evaluation of a suspect
22 throttle actuator removed from the Petitioner's vehicle did
23 not reveal a component problem.

24 NHTSA notes: "This in no way implies that we doubt the
25 Petitioner's reported experiences with his vehicle. Rather,
26 the agency simply lacks evidence of a safety related
27 defect in his vehicle or a trend of such defects in the
28 subject vehicles. In view of the foregoing, it is unlikely

1 that NHTSA would issue an order for the notification and
2 remedy of a safety-related defect as alleged by the
3 Petitioner in the subject vehicles at the conclusion of the
4 requested investigation. Therefore, in view of the need to
5 allocate and prioritize NHTSA's limited resources to best
6 accomplish the agency's safety mission, the petition is
7 denied."

8 *March 29, 2007:* NHTSA opens a low-level
9 investigation (PE07016) into 80,000 2007 Lexus ES350
10 for accessory floor mat interference with the throttle
11 pedal. NHTSA's Office of Defects Investigation notes
12 that these vehicles come equipped with a standard floor
13 mat made from a carpeted material.

14 *April 12, 2007:* Toyota sends notification to
15 dealers that it will be contacting Lexus customers about
16 proper floor mat usage.

17 *August 8, 2007:* NHTSA upgrades PE07016 to
18 EA07010 to further investigate unintended acceleration in
19 2007 Lexus ES350s. The agency notes 40 complaints;
20 eight crashes and 12 injuries. Complainants interviewed
21 by ODI stated that they applied the throttle pedal to
22 accelerate the vehicle then experienced unwanted
23 acceleration after release. Subsequent (and sometimes
24 repeated) applications of the brake pedal reduced
25 acceleration but did not stop the vehicle.

26 *August 30, 2007:* NHTSA files memo in EA07010
27 about the inspection of a Lexus ES350 that experienced a
28 sudden unintended acceleration incident and conducted a

1 telephone interview with the owners. An inspection of the
2 vehicle found all weather mats are installed at all four
3 seating positions. The driver side all weather mat was
4 found to be installed by itself; it was not on top of another
5 floor mat. The installed mat was found to be unsecured by
6 the retention hooks; the mat did not interfere with the
7 accelerator pedal in the position it was originally
8 inspected.

9 *September, 2007:* Bookout fatal crash in Oklahoma
10 involving 2005 Camry.

11 *September 26, 2007:* Toyota issues Recall 07E-082
12 involving 55,000 Lexus/Toyota with optional All Weather
13 Floor Mats manufactured January 3, 2006-September 13,
14 2007. All owners of 2007 and early 2008 model year
15 Lexus ES350 and Toyota Camry vehicles were to be
16 notified of the safety campaign and the timing when the
17 replacement mats will become available. Toyota also
18 stopped the sale of the Toyota/Lexus All Weather Floor
19 Mat designed specifically for 2007 and early 2008 model
20 year Camry and ES 350 Lexus vehicles.

21 *October 10, 2007:* NHTSA's Office of Defects
22 Investigation interviews another complainant in
23 EA07010, in which she tells investigator about the run-up
24 to a rollover involving a Lexus ES350. The investigator
25 concludes it resulted from an unsecured floor mat.

26 *October 11, 2007:* ODI closes EA07010 into
27 accessory floor mat interference in 2002 – 2008 Lexus
28 ES350 and Camry vehicles in the wake of Recall 07E-

1 082.

2 **2008**

3 *January 10, 2008:* William Kronholm of Helena,
4 MT files a request for a defect investigation into Sudden
5 Unintended Acceleration in 2006 Tacomas. Kronholm
6 experienced two incidents of sudden unintended
7 acceleration and investigated the agency complaints
8 database and found 32 complaints involving the trucks.

9 *January 31, 2008:* NHTSA's Office of Defects
10 Investigation opens investigation DP08001 into sudden
11 unintended acceleration in 2006, 2007 Tacomas, based
12 Kronholm's defect petition and on 31 complaints to the
13 agency.

14 *April 10, 2008:* NHTSA opens low-level
15 investigation PE08025 into SUA involving 54,000 2004
16 Toyota Siennas, based on a report alleging unwanted
17 acceleration on a subject vehicle. The complainant
18 reported that he applied the accelerator pedal to accelerate
19 the vehicle and experienced unwanted acceleration upon
20 release. Field data collected by NHTSA's Office of
21 Defects Investigation indicates that when a retainer pin is
22 missing from the driver's side center stack/console trim
23 panel, the panel can detach from the console and the
24 accelerator pedal can become entrapped under the trim
25 panel causing unwanted acceleration.

26 *April 18, 2008:* Toyota responds to NHTSA
27 information request in the Kronholm petition and reports
28 a total of 326 unique vehicle complaints of sudden

1 unintended acceleration in Tacomas.

2 As part of PE08025, the NHTSA Vehicle Research
3 and Test Center is asked to conduct tests of 2004 Toyota
4 Sienna vans for a condition that can cause the engine to
5 produce power when the accelerator is not depressed.
6 NHTSA notes that the driver's side trim panel, which is
7 secured by a trim clip to the center console, can become
8 detached and prevent the pedal from returning to the fully
9 closed position.

10 *April 25, 2008:* Toyota's response to NHTSA's
11 request in response to the Kronholm petition on Tacoma
12 SUA (DP08001) claims that there is no trend; the
13 complaints have been artificially inflated by media
14 attention and by Tacoma web groups.

15 *April 30, 2008:* ODI issues Final Report in its
16 investigation of floor mats (EA07010). The Vehicle
17 Research and Test Center (VRTC) tested a Lexus ES-350.
18 During its tests of the vehicle electronics, the VRTC said
19 that it introduced multiple electrical signals into the
20 electrical system to test the robustness of the electronics
21 against single point electrical interference failures and
22 could not identify the problem.

23 The VTRC also sent surveys to 1986 registered
24 owners of a 2007 Lexus ES-350 requesting information
25 regarding episodes of unintended acceleration. Of the 600
26 people that responded, 59 stated that they experienced
27 unintended acceleration and 35 complained of pedal
28 interference with the Lexus rubber all-weather floor mats.

1 *June 25, 2008:* In response to the Sienna
2 investigation (PE08025) regarding 2004 Siennas, Toyota
3 reported complaints about sudden unintended acceleration
4 in Siennas that take two forms: allegations of excessive
5 engine speed and/or power output without the driver
6 pressing on the accelerator pedal or the engine speed and
7 or power output failing to decrease (subside) when the
8 accelerator pedal was no longer being depressed by the
9 driver. Toyota also says that it sees no evidence of a
10 defect and explains how the trim could catch the
11 accelerator and the design changes it made to the trim
12 panel to correct this.

13 *August 8, 2008:* NHTSA upgrades its investigation
14 of 2004 Sienna sudden unintended acceleration to an
15 Engineering Analysis (EA08014).

16 *August 27, 2008:* NHTSA closes investigation its
17 investigation into Tacomas (DP08001) and denies
18 Kronholm petition. The agency concludes that it is unable
19 to find an explanation and have been unable to determine
20 a cause for sudden unintended acceleration complaints in
21 Tacomas.

22 *October 15, 2008:* Toyota made a presentation to
23 NHTSA on sudden unintended acceleration and trim
24 interference in 2004 Siennas. Toyota demonstrated how
25 an unrestrained early design level trim panel interacts
26 with the accelerator after pedal depression. Toyota also
27 advised that it was conducting a field survey to examine
28 panel retention and that preliminarily one vehicle had

1 been identified with a concern.

2 **2009**

3 *January 26, 2009:* NHTSA closes its investigation
4 into 2004 Sienna sudden unintended acceleration after
5 Toyota agrees to recall vehicles built between January 10,
6 2003 and June 11, 2003, when the original design floor
7 carpet cover was used in production.

8 Toyota issues Recall 09V-023 for 26,501 2004
9 Siennas. Toyota does not concede that this is a defect, but
10 calls the actions a “safety improvement campaign” that is
11 not being conducted under the Safety Act. Toyota’s recall
12 instructs dealers to replace the original floor carpet cover
13 with the newer design floor carpet (and retention clip) at
14 no charge to the owner. The repair will reduce the
15 potential for trim panel interference with the accelerator
16 pedal travel should the retaining clips become missing
17 because of improper service or other reasons.

18 *March 19, 2009:* Jeffrey Pepski of Plymouth
19 Minnesota files a defect petition requesting NHTSA to re-
20 open the sudden unintended acceleration investigation
21 into Lexus vehicles requesting “an additional
22 investigation into the unwanted and unintended
23 acceleration of model year [MY] 2007 Lexus ES350 as
24 the initial investigation (PE7-016) was too narrow in
25 scope and did not adequately address all complaints made
26 to the NHTSA with respect to vehicle speed control
27 concerns.” Additionally the petitioner requested an
28 “investigation of MY 2002-2003 Lexus ES300 for those

1 'longer duration incidents involving uncontrollable
 2 acceleration where brake pedal application allegedly had
 3 no effect' that were determined not to be within the scope
 4 of Investigation PE04-021.

5 *May 14, 2009:* Toyota files a direct response to
 6 Pepski's petition in DP09001. Toyota dismisses all of the
 7 issues Pepski raises in his petition and says there is no
 8 basis for an investigation. Toyota claims that when Lexus
 9 inspected Pepski's vehicle, it found that the floor mat was
 10 unsecured and blamed the event on that

11 *August 28, 2009:* Fatal Saylor crash in Santee, CA
 12 involving a 2009 Lexus ES350.

13 *September 29, 2009:* The National Highway
 14 Traffic Safety Administration and Toyota issues
 15 consumer alerts urging owners of a wide range of Toyota
 16 and Lexus models to take out any removable driver's
 17 floor mat and not replace it with any other floor mat.
 18 Toyota says that an examination of recent events
 19 prompted the alert. The affected models are:

20 2007 – 2010 Camry

21 2005 – 2010 Avalon

22 2004 – 2009 Prius

23 2005 – 2010 Tacoma

24 2007 – 2010 Tundra

25 2007 – 2010 ES350

26 2006 – 2010 IS250 and IS350

27 *October 5, 2009:* Toyota initiates Recall 09V-388
 28 to address potential accelerator pedal entrapment by floor

1 mats in approximately 3.8 million vehicles.

2 *October 28, 2009:* NHTSA closes Defect Petition
3 09001. The Office of Defects Investigations' analysis
4 concludes 78 percent of the complaints involved incidents
5 of floor mat interference, including all of the crashes and
6 injuries:

7 *November 3, 2009:* Toyota issues a statement
8 characterizing the closing of Defect Petition 09-001 as
9 proof "that no defect exists in vehicles in which the
10 driver's floor mat is compatible with the vehicle and
11 properly secured."

12 *November 4, 2009:* NHTSA swiftly issues a
13 statement to correct Toyota's statement that the
14 investigation is over:

15 "Toyota has announced a safety recall involving 3.8
16 million vehicles in which the accelerator pedal may
17 become stuck at high vehicle speeds due to interference
18 by the driver's side floor mat, which is obviously a very
19 dangerous situation. Toyota has written to vehicle owners
20 stating that it has decided that a safety defect exists in
21 their vehicles and asking owners to remove all floor mats
22 while the company is developing a remedy. We believe
23 consumers should follow Toyota's recommendation to
24 address the most immediate safety risk. However,
25 removal of the mats is simply an interim measure, not a
26 remedy of the underlying defect in the vehicles. NHTSA
27 is discussing with Toyota what the appropriate vehicle
28 remedy or remedies will be. This matter is not closed until

1 Toyota has effectively addressed the vehicle defect by
2 providing a suitable remedy.”

3 *November 25, 2009:* Toyota announces plans to
4 reconfigure the accelerator pedal on 3.8 million vehicles
5 going back to the 2004 model year. Other fixes include
6 modifying the floor area around the pedal and in some
7 models, installing a brake-to-idle override that allows the
8 driver to quickly stop a vehicle in an unintended
9 acceleration incident and newly-designed replacement
10 driver- and front-passenger side all-weather mats.

11 The recalled vehicles include:

12 2007-2010 Camry

13 2005 -2010 Avalon

14 2004 -2009 Prius

15 2005-2010 Tacoma

16 2007-2010 Tundra

17 2007-2010 Lexus ES 350

18 2006-2010 Lexus IS 250

19 2006 – 2010 Lexus IS 350.

20 *November 27, 2009:* NHTSA receives anonymous
21 tip from a Kentucky city that just happens to be the home
22 of a Toyota-owned supplier of throttle bodies to check out
23 the probability that cracked throttle body shafts are
24 causing SUA. “Concerned Citizen” says Toyota
25 management knows about the problem, but has remained
26 silent.

27 **2010**

28 *January 4, 2010:* NHTSA posts the anonymous

1 complaint to the public file.

2 *January 22, 2010:* Toyota announces a new recall
3 for sticky accelerator pedals, separate and apart from the
4 floor mat recall. Toyota says: “Due to the manner in
5 which the friction lever interacts with the sliding surface
6 of the accelerator pedal inside the pedal sensor assembly,
7 the sliding surface of the lever may become smooth
8 during vehicle operation. In this condition, if
9 condensation occurs on the surface, as may occur from
10 heater operation (without A/C) when the pedal assembly
11 is cold, the friction when the accelerator pedal is operated
12 may increase, which may result in the accelerator pedal
13 becoming harder to depress, slower to return, or, in the
14 worst case, mechanically stuck in a partially depressed
15 position. In addition, some of the affected vehicles’ pedals
16 were manufactured with friction levers made of a
17 different material (PA46), which may be susceptible to
18 humidity when parked for a long period in hot
19 temperatures. In this condition, the friction when the
20 accelerator pedal is operated may increase, which may
21 result in the accelerator pedal movement becoming rough
22 or slow to return.” The affected vehicles are:

23 2009-2010 RAV4,
24 2009-2010 Corolla,
25 2009-2010 Matrix,
26 2005-2010 Avalon,
27 2007-2010 Camry,
28 2010 Highlander,

2007-2010 Tundra,

2008-2010 Sequoia

31. Toyota never made any significant changes to improve the acceleration system and the electrical system, in spite of the availability of safe and inexpensive alternative designs and feasible modifications.

32. According to a Toyota internal document obtained by *The Detroit News* on February 21, 2010, Toyota officials bragged in July 2009 about avoiding a costly whole-scale recall related to sudden acceleration complaints. A limited recall saved Toyota more than \$100 million, according to the document, which is an internal presentation from Toyota's Washington office. The document notes that Toyota's safety officials had saved the company significant expense by limiting the recall to 55,000 floor mats in 2007. "Negotiated 'equipment' recall on Camry/ES re SA (Sudden Acceleration); saved \$100M+, w/ no defect found," the document said. This internal document is further evidence that Toyota knew about the sudden acceleration problem and nonetheless decided to avoid a recall of the affected vehicles, in conscious disregard for the safety of consumers, including Plaintiff.

33. Toyota knew that a properly designed brake-to-idle override system was necessary to allow drivers to bring a vehicle under control in the event of a sudden acceleration incident. Toyota made the following statement in November 2009 when they announced their solution to the sudden acceleration problem:

In addition, as a separate measure independent of the vehicle-based remedy, Toyota will install a brake override system into the involved Camry, Avalon, and Lexus ES 350, IS 350 and IS 250 models as an extra measure of confidence. This system cuts engine power in case of simultaneous application of both the accelerator pedal and

1 brake pedals.

2 Yet, Toyota has failed to install this safety feature on all of the affected
3 vehicles, including the subject vehicle.

4 34. On February 8, 2010, Toyota Motor Sales, U.S.A., Inc, also
5 announced a voluntary safety recall on 2010 Prius vehicles and 2010 Lexus HS
6 250h vehicles to update software in the vehicle's anti-lock brake system (ABS).
7 This recall involves approximately 133,000 2010 Prius vehicles and 14,550 2010
8 Lexus HS 250h vehicles.

9 35. As a result of Toyota's conscious disregard for the safety of
10 consumers, numerous individuals have been killed or severely injured.

11 36. As a result of Toyota's marketing campaigns, and the guise of
12 safety created by Toyota, numerous consumers purchased and drove Toyota
13 vehicles, including Plaintiff and decedent.

14 37. Plaintiff LORRIE KRIEGER is the natural mother of Jonathan
15 Senger, deceased, and is the successor in interest and executor of the estate.

16 38. Prior to his death, Jonathan Senger was a safe driver.

17 39. Prior to his death, Jonathan Senger was in good physical
18 condition.

19 40. Prior the subject incident, Plaintiff LORRIE KRIEGER
20 purchased a 2000 Lexus GS 400. She was unaware of the vehicle's hidden and
21 potentially lethal defects, of which Toyota was or should have been aware.

22 41. Prior the subject incident, in October 2003, Plaintiff LORRIE
23 KRIEGER complained about a sudden unintended acceleration incident to the
24 Lexus dealership where she had purchased the subject vehicle. Specifically, she
25 called Lexus of Clearwater and stated that the subject Lexus was out of control, its
26 tires squeeled, and that it was almost like the throttle was wide open. She told the
27 Lexus dealership that the car almost killed her. It was further reported that the
28 vehicle was racing and that the throttle was sticking. The Lexus dealership

1 replaced the throttle body and Plaintiff LORRIE KRIEGER was assured that there
2 would be no further problems.

3 42. Plaintiff relied upon the representations by the Lexus dealership
4 that the vehicle was fixed and that there would be no further incidents of
5 unintended acceleration. There were no further incidents until August 17, 2007.

6 43. On August 17, 2007, at approximately 1:25 p.m., Jonathan
7 Senger, age 26, was driving his mother's vehicle, the subject 200 Lexus GS 400.
8 He was driving at a safe rate of speed, proceeding westbound on Curlew Road in
9 Dunedin, Florida. The Lexus suddenly accelerated at a high rate of speed and Mr.
10 Senger was unable to stop the vehicle as it sped through the intersection of Belcher
11 Road. The Lexus accelerated through a red light, crossed the lane into oncoming
12 traffic, and collided head-on with a Saturn SUV that was waiting in the left hand
13 turn lane facing eastbound on Curlew Road at the intersection of Belcher Road.

14 44. As a result of the collision, Jonathan Senger, suffered multiple
15 traumatic injuries and eventually died.

16 **TOYOTA DEFENDANTS' CONCEALMENT OF THE DEFECTS**

17 45. The Toyota Defendants' failure to document or follow up on the
18 known defects in its cars and trucks, and concealment of known defects from the
19 NHTSA, Plaintiff, and the community, constitutes fraudulent concealment that
20 equitably tolls applicable statutes of limitation.

21 46. According to *Bloomberg*, as reported on February 12, 2010,
22 former regulators hired by Toyota Motor Corp. helped end at least four U.S.
23 investigations of unintended acceleration by company vehicles in the last decade,
24 warding off possible recalls, court and government records show. According to
25 *Bloomberg*, Christopher Tinto, vice president of regulatory affairs in Toyota's
26 Washington office, and Christopher Santucci, who works for Tinto, helped
27 persuade the National Highway Traffic Safety Administration to end probes
28 including those of 2002-2003 Toyota Camrys and Solaras, court documents show.

1 According to *Bloomberg*, both men joined Toyota directly from NHTSA, Tinto in
2 1994 and Santucci in 2003. According to *Bloomberg*, in one example of the Toyota
3 aides' role, Santucci testified in a Michigan lawsuit that the company and NHTSA
4 discussed limiting an examination of unintended acceleration complaints to
5 incidents lasting less than a second. "We discussed the scope" of the investigation,
6 Santucci testified. "NHTSA's concerns about the scope ultimately led to a decision
7 by the agency to reduce that scope. You say it worked out well for Toyota, I think
8 it worked out well for both the agency and Toyota." As reported by *Bloomberg*,
9 NHTSA opened eight investigations of unintended acceleration of Toyota vehicles
10 from 2003 to 2010, according to Safety Research & Strategies Inc., a Rehoboth,
11 Massachusetts, group that gathers data from NHTSA and other sources for
12 plaintiff's attorneys and consumers. Three of the probes resulted in recalls for floor
13 mats. Five were closed, meaning NHTSA found no evidence of a defect. In four of
14 the five cases that were closed, Tinto and Santucci worked with NHTSA on
15 Toyota's responses to the consumer complaints the agency was investigating,
16 agency documents show.

17 47. The Toyota Defendants are estopped from relying on the statute
18 of limitations as a defense because Toyota actively concealed the acceleration
19 defects by, among other things, suppressing reports or complaints, failing to follow
20 through on NHTSA notification requirements, and failing to disclose known
21 defects. Instead of revealing the defects, Toyota continued to represent that their
22 cars and trucks were safe for their intended use.

23 48. Toyota's conduct, as described in this complaint, amounts to
24 conduct purposely committed, which Toyota must have realized was dangerous,
25 heedless and reckless, without regard to the consequences or the rights and safety of
26 Plaintiff and consumers.

FIRST CAUSE OF ACTION:
Negligence

49. Plaintiff incorporates by reference and realleges all paragraphs previously alleged herein.

50. At all times herein mentioned, Defendants Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing of North America, Toyota Motor Manufacturing, California, Inc., Toyota Motor Sales, Inc., and Toyota Motor Corporation, CTS Corporation and DOES 1 through 10, inclusive, (“Defendants”), designed, manufactured, assembled, analyzed, recommended, merchandised, advertised, promoted, distributed, supplied, and sold to distributors and retailers for sale, the subject vehicle and/or its component parts.

51. Defendants owed Plaintiff a duty to exercise reasonable care in the design, testing, manufacture, assembly, sale, distribution and servicing of the subject vehicle, including a duty to ensure that the subject vehicle did not cause Plaintiff, other users, bystanders, or the public, unnecessary injuries or deaths.

52. Defendants knew or should have known that the subject vehicle is defectively designed and inherently dangerous and has a propensity to suddenly accelerate, lose control, and cause injuries.

53. Defendants knew or should have known that the subject vehicle was defectively designed and/or manufactured and was therefore prone to failure under normal driving conditions, potentially causing injuries and/or deaths.

54. Defendants failed to exercise ordinary care and breached their duty by, among other things:

a. Failure to use due care in the manufacture, distribution, design, sale, testing, and servicing of the subject vehicle and its component parts in order to avoid the aforementioned risks to individuals;

b. Failure to provide adequate warning of the sudden acceleration problem and its propensity to cause and/or contribute to an accident;

1 c. Failure to incorporate within the vehicle and its design
2 reasonable safeguards and protections against sudden acceleration and the
3 consequences thereof;

4 d. Failure to make timely correction to the design of the
5 subject vehicle to correct the sudden acceleration problems;

6 e. Failure to adequately identify and mitigate the hazards
7 associated with sudden unintended acceleration in accordance with good
8 engineering practices and other ways; and,

9 f. Were otherwise careless or negligent.

10 55. The aforementioned negligent acts and omissions of Defendants
11 were the direct and proximate cause of Plaintiff's damages.

12 56. Plaintiff is, therefore entitled to damages in an amount to be
13 proven at trial, together with interest thereon and costs.

14 WHEREFORE, Plaintiff prays judgment against Defendants, and each
15 of them, as hereinafter set forth.

16 **SECOND CAUSE OF ACTION:**
17 **Strict Products Liability: Design Defect**

18 57. Plaintiff incorporates by reference and realleges all paragraphs
19 previously alleged herein.

20 58. Defendants, and each of them, designed, engineered, developed,
21 manufactured, fabricated, assembled, equipped, tested or failed to test, inspected or
22 failed to inspect, repaired, retrofit or failed to retrofit, failed to recall, labeled,
23 advertised, promoted, marketed, supplied, distributed, wholesaled, and sold the
24 subject vehicle and its component parts and constituents, which was intended by the
25 Defendants, and each of them, to be used for the purpose of use as passenger
26 vehicle, and other related activities.

27 59. Defendants, and each of them, knew that said vehicle was to be
28 purchased and used without inspection for defects by Plaintiff and the general

1 public.

2 60. The subject vehicle was unsafe for its intended use by reason of
3 defects in its manufacture, design, testing, components and constituents, so that it
4 would not safely serve its purpose, but would instead expose the users of said
5 product to serious injuries because of the failure of Defendants, and each of them,
6 to properly guard and protect the users of the subject vehicle from the defective
7 design of said product.

8 61. Defendants designed the subject vehicle defectively, causing it
9 to fail to perform as safely as an ordinary consumer would expect when used in an
10 intended or reasonably foreseeable manner.

11 62. The risks inherent in the design of the subject vehicle outweigh
12 significantly any benefits of such design.

13 63. Plaintiff was not aware of the aforementioned defects at any
14 time prior to recent revelations regarding problems with Toyota vehicles.

15 64. As a legal and proximate result of the aforementioned defects of
16 the subject vehicle, Plaintiff sustained the injuries and damages set forth herein.

17 65. Plaintiff is, therefore, entitled to damages in an amount to be
18 proven at the time of trial.

19 WHEREFORE, Plaintiff pray judgment against Defendants, and each
20 of them, as hereinafter set forth.

21 **THIRD CAUSE OF ACTION:**
22 **Strict Product Liability - Failure to Warn**

23 66. Plaintiff hereby incorporates by reference and realleges all
24 paragraphs previously alleged herein.

25 67. Defendants, and each of them, knew that the subject vehicle, and
26 its component parts, would be purchased and used without inspection for defects in
27 the design of the vehicle.

28 68. The subject vehicle was defective when it left the control of

1 each of these Defendants.

2 69. Defendants knew or should have known of the substantial
3 dangers involved in the reasonably foreseeable use of these vehicles, whose
4 defective design, manufacturing, and lack of sufficient warnings caused them to
5 have an unreasonably dangerous propensity to suffer from sudden unintended
6 acceleration and thereby cause catastrophic injuries.

7 70. Defendants failed to adequately warn of the substantial dangers
8 known or knowable at the time of the defective vehicles' design, manufacture, and
9 distribution.

10 71. Defendants failed to provide adequate warnings, instructions,
11 guidelines or admonitions to members of the consuming public, including decedent
12 and Plaintiff, of the design and manufacturing defects, which Defendants knew, or
13 in the exercise of reasonable care should have known, to have existed in the subject
14 vehicle, and its component parts.

15 72. Defendants knew that these substantial dangers are not readily
16 recognizable to an ordinary consumer and that consumers would purchase and use
17 these products without inspection.

18 73. At the time of decedent's and Plaintiff's injuries, the subject
19 vehicle was being used in the manner intended by Defendants, and in a manner that
20 was reasonably foreseeable by Defendants as involving substantial danger that was
21 not readily apparent to its users.

22 74. Plaintiff's damages were the legal and proximate result of the
23 actions and inactions of the Defendants, who owed a duty to Plaintiff in designing,
24 manufacturing, warning about, and distributing the subject vehicle.

25 WHEREFORE, Plaintiff prays judgment against Defendants, and each
26 of them, as hereinafter set forth.

FOURTH CAUSE OF ACTION:
Breach of Implied Warranties of Merchantability
and Fitness for a Particular Purpose

75. Plaintiff hereby incorporates by reference and realleges all paragraphs previously alleged herein.

76. Prior to the time that the subject vehicle was being used by Plaintiff at the time of the subject incident, the Defendants, and each of them, impliedly warranted to members of the general public, including Plaintiff, that the subject vehicle was of merchantable quality and safe for the use for which it was intended by the Defendants, namely, for the purpose of use as a passenger vehicle, and other related activities.

77. Plaintiff and decedent relied on the skill and judgment of Defendants, and each of them, in the selection, purchase and use of the subject vehicle.

78. The subject vehicle was not safe for its intended use nor was it of merchantable quality as warranted by Defendants, and each of them, in that it was defectively designed, thereby dangerously exposing the user of said vehicle and those around it to serious injury.

79. After decedent and Plaintiff received the injuries complained of herein as a result of said defective condition of the subject vehicle, notice was given by Plaintiff to Defendants, by filing this lawsuit in the time and in the manner and in the form prescribed by law, of the breach of said implied warranty.

80. As a legal and proximate result of the breach of said implied warranties, Plaintiff sustained the damages herein set forth.

81. Plaintiff is, therefore, entitled to damages in an amount to be proven at the time of trial.

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as hereinafter set forth.

FIFTH CAUSE OF ACTION:
(Fraud and Deceit: Fraudulent Concealment, California Civil Code §§ 1709 *et seq.*, Against the Toyota Defendants Only)

82. Plaintiff hereby incorporates by reference and realleges all paragraphs previously alleged herein.

83. Throughout the relevant time period, Defendants knew that the subject vehicle was defective in that these vehicles have an unreasonably dangerous propensity to suddenly accelerate and thereby injure the user of these vehicles and others.

84. In violation of California Civil Code Sections 1709 and 1710, Defendants fraudulently concealed from and/or failed to disclose to or warn Plaintiff of the true defective nature of the subject vehicle.

85. Defendants were under a duty to Plaintiff to disclose and warn of the defective nature of the subject vehicle because: (1) Defendants were in a superior position to know the true state of the facts about the hidden defect in the subject vehicle, and that defect was latent; (2) Defendants made partial disclosures about the safety and quality of the subject vehicle while not revealing their true defective nature; and (3) Defendants fraudulently and affirmatively concealed the defective nature of the subject vehicle from Plaintiff.

86. The facts concealed and/or not disclosed by Defendants to Plaintiff were material facts that a reasonable person would have considered to be important in deciding whether or not to purchase and/or operate the subject vehicle.

87. Defendants intentionally concealed and/or failed to disclose the true nature of the problems with the subject vehicle for the purpose of inducing Plaintiff to act thereon, and Plaintiff justifiably acted or relied upon, to their detriment, the concealed and/or non-disclosed facts as evidenced by their purchase and operation of the subject vehicle.

1 duty to disclose and which were known or should have been known to Defendants
2 to be false, misleading, or deceptive.

3 94. As a direct and proximate result of Defendants' misleading
4 advertising, Plaintiff has suffered injury in fact and has lost money or property.

5 95. The misleading advertising described herein presents a
6 continuing threat to Plaintiffs and members of the public in that Defendants persist
7 and continue to engage in these practices, and will not cease doing so unless and
8 until forced to do so by this Court. Defendants' conduct will continue to cause
9 irreparable injury to Plaintiffs and consumers unless restrained.

10 **SEVENTH CAUSE OF ACTION:**
11 **Wrongful Death and Survivorship**

12 96. Plaintiff incorporates by reference and realleges all paragraphs
13 previously alleged herein.

14 97. Plaintiff LORRIE KREIGER is the natural mother, successor in
15 interest and executor of the estate of Jonathan Senger, deceased.

16 98. As a result of Defendants' actions and negligence, Jonathan
17 Senger, before his death, suffered extreme pain and suffering, hospital and medical
18 expenses, general damage, and emotional distress. Jonathan Senger did not die
19 immediately and suffered much from his grave injuries before succumbing to them.

20 99. The damages claimed for wrongful death and the relationships
21 of Plaintiff to the deceased are as follows:

22
23 100. LORRIE KREIGER, individually and on behalf of the Estate of
24 Jonathan Senger, deceased: loss of consortium; loss of financial support; loss of
25 services; recovery for grief, mental anguish, emotional pain, suffering and distress;
26 loss of inheritance; and medical, funeral and burial expenses.

27 a. Jonathan Senger: loss of lifetime earnings; and punitive
28 damages as provided by law against Defendants.

1 b. LORRIE KREIGER, individually and on behalf of the
2 Estate of Jonathan Senger, deceased, sues as a personal representative and/or
3 successor in interest under C.C.P. 377.30, and on behalf of the qualifying heirs and
4 wrongful death claimants pursuant to C.C.P. Section 377.60, and claims the
5 following damages arising from the death of Jonathan Senger: hospital and medical
6 expenses from time of injury until time of death, funeral and burial expenses,
7 general damages and pain and suffering from time of injury until time of death, loss
8 of services, loss of financial support, and other damages to be proven at time of
9 trial.

10 **ADDITIONAL ALLEGATIONS REGARDING**
11 **CLAIM FOR PUNITIVE DAMAGES AGAINST THE TOYOTA**
12 **DEFENDANTS**

13 101. Plaintiff incorporates by reference and hereby realleges all
14 paragraphs previously alleged herein.

15 102. At all times herein referenced, officers, directors, and managing
16 agents of Toyota knew, and were aware, that the subject vehicle was defective and
17 dangerous.

18 103. At all times herein referenced, officers, directors, and managing
19 agents of Toyota knew, and were aware, that numerous people had been injured or
20 killed by these vehicles, as well as other Toyota trucks and cars with similar sudden
21 acceleration defects.

22 104. The Toyota Defendants, and each of them, designed,
23 engineered, developed, manufactured, fabricated, assembled, equipped, tested or
24 failed to test, inspected or failed to inspect, repaired, retrofit or failed to retrofit,
25 failed to recall, labeled, advertised, promoted, marketed, supplied, distributed,
26 wholesaled, and sold the subject vehicle, and its component parts, a product which
27 said Defendants knew to be dangerous and unsafe for the purpose for which they
28 intended it to be used, namely, for use as a passenger vehicle.

1 105. At all times herein mentioned, prior to and at the time
2 Defendants, and each of them, sold the subject vehicle to Plaintiff, and prior to the
3 time that said product was used by decedent, the Defendants, and each of them,
4 knew, or should have known, that the subject vehicle, and its component parts, was
5 defectively designed and manufactured, that it had extremely dangerous properties
6 and defects, and that it had defects which would cause serious injuries and damage
7 to users of said product, thereby threatening the life and health of the users; and at
8 all of those times, Defendants, and each of them, knew that the defects in these
9 vehicles had caused serious injuries and damage to other users of these vehicles.

10 106. At all times herein mentioned, Defendants, and each of them,
11 despite the actual knowledge described hereinabove, intentionally suppressed the
12 aforementioned complaints of users, criticisms, and other information to keep such
13 knowledge from the general public, including decedent and Plaintiff, and failed to
14 take any steps to warn decedent or Plaintiff, or other members of the general public,
15 of the dangers of using the subject vehicle.

16 107. At all times herein mentioned, Defendants, and each of them,
17 had actual knowledge of the facts hereinabove alleged demonstrating that serious
18 injury to users of the subject vehicle, including Plaintiff, would potentially result.
19 Defendants, and each of them, nevertheless deliberately failed and refused to recall
20 the subject vehicle, or to take any other steps whatsoever to prevent such injuries.
21 Defendants, and each of them, misrepresented the safety of the subject vehicle, and
22 failed and refused to take any steps to prevent injuries from said vehicle in order to
23 increase the profits of Defendants, and each of them, from the sale of said vehicle.

24 108. As a legal and proximate result of the said defects and the acts
25 and conduct of Defendants, and each of them, as hereinabove alleged, Plaintiff
26 sustained the injuries and damages hereinabove set forth.

27 109. The conduct and acts of Defendants, and each of them, as
28 hereinabove set forth, in allowing such an extremely dangerous product to be used

1 by members of the general public, including Plaintiff, constitute fraud, malice and
2 oppression toward Plaintiff and others, and a conscious disregard of the safety of
3 Plaintiff and others.

4 110. Plaintiff is therefore entitled to exemplary or punitive damages,
5 which would serve to punish the Defendants, and each of them, and to deter
6 wrongful conduct in the future.

7 WHEREFORE, Plaintiff prays for judgment against Defendants, and
8 each of them, as hereinafter set forth.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff requests of this Court the following relief:

11 A. For general damages, in an amount to be proven at the time of
12 trial;

13 B. For medical, incidental, hospital, psychological care and other
14 expenses, in an amount to be proven at the time of trial;

15 C. For loss of earnings and earning capacity, in an amount to be
16 proven at the time of trial;

17 D. For an award of pre-judgment and post-judgment interest as
18 provided by law;

19 E. For consequential damages, in an amount to be proven at the
20 time of trial;

21 F. For exemplary or punitive damages against Defendants Toyota
22 Motor North America, Inc., Toyota Motor Engineering & Manufacturing of North
23 America, Toyota Motor Manufacturing, California, Inc., Toyota Motor Sales, Inc.
24 and Toyota Motor Corporation, as provided by law;

25 G. For funeral and burial expenses and other wrongful death and
26 survivorship damages as allowed by law;

27 H. For an award providing for payment of costs of suit;
28

1 I. For such other and further relief as this Court may deem just and
2 proper.

3 Dated: March 9, 2010

LIEFF, CABRASER, HEIMANN &
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4
5
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues which may be tried by a jury.

Dated: March 9, 2010

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